

CITY COUNCIL OF THE CITY OF ANNAPOLIS

ORDINANCE NO. O-39-04Amended

Introduced by Mayor Moyer
Alderman Hoyle
Alderman Kelley
Alderman Cordle
Alderman Carter
Alderman Fox
Alderman Cohen

LEGISLATIVE HISTORY

First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
12/13/04	2/28/05	2/28/05	4/12/05

Referred to:	Meeting Date:	Action Taken:
Economic Matters	5/4/05	Favorable w/amendments

AN ORDINANCE concerning

Lease of City Dock - Ocean Race Chesapeake, Inc.

FOR the purpose of authorizing a lease of certain municipal property located in the Compromise Street, general harbor and Dock Street areas to Ocean Race Chesapeake, Inc., a body corporate, for a certain period of time in May 2006, subject to certain terms, provisions, and conditions, for the purpose of conducting sailboat race festivities; and all matters relating to said lease.

WHEREAS, the Annapolis-Anne Arundel County Chamber of Commerce, Inc., sponsor of the Maritime Heritage Festival, desires to bring the Volvo Ocean Race to the City, and to that end, has asked the City to lease certain property to Ocean Race Chesapeake, Inc. for sailboat race festivities in connection with the Volvo Ocean Race; and

WHEREAS, the Volvo Ocean Race festivities will promote the City of Annapolis' prominence as a Sailing Capital, promote the Annapolis Maritime Industry and expose the Annapolis Maritime Heritage to the international community; and

WHEREAS, the Annapolis City Council finds that these proposed festivities will be of substantial benefit of the City; and

1 **WHEREAS**, Article III, Section 8 of the Charter of the City of Annapolis requires the
2 passage of an ordinance to authorize the lease.
3

4 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
5 **COUNCIL** that the proposed lease between the City of Annapolis and Ocean Race
6 Chesapeake, Inc. for the rental of certain municipal property in the Compromise Street,
7 harbor and Dock Street area, as described in the Lease, a copy of which is attached hereto
8 and made a part hereof, is hereby approved and the Mayor is authorized to execute the
9 Lease on behalf of the City of Annapolis.
10

11 **SECTION II: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
12 **ANNAPOLIS CITY COUNCIL** that consistent with Article III, Section 8 of the Charter of the
13 City of Annapolis, it is expressly determined by the City Council that the leasing of the
14 property which is the subject of the Lease Agreement will better serve the public need for
15 which the property was acquired
16

17 **SECTION III: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
18 **ANNAPOLIS CITY COUNCIL** that pursuant to City Code, Section 6.04.210D.3, the
19 Annapolis City Council hereby waives the fees associated with Lessee's use of City
20 facilities and services in connection with the use of the property.
21

22 **SECTION IV: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
23 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
24 passage.
25

26
27 **ADOPTED** this 9th day of May, 2005.
28

29
30 **ATTEST:**
31

THE ANNAPOLIS CITY COUNCIL

32
33
34 _____
35 Deborah Heinbuch, MMC
36 City Clerk
37

BY: _____
ELLEN O. MOYER, MAYOR

1
2
3
4
5
6
7
8
9

EXPLANATION:

Highlighting indicates matter added to existing law.

~~Strike Out indicates matter deleted from existing law.~~

Underlining indicates amendments.

LEASE AGREEMENT
Volvo Ocean Race 2006

THIS LEASE AGREEMENT is made this ____ day of _____, 2005, by and between **THE CITY OF ANNAPOLIS**, a municipal corporation of the State of Maryland (hereinafter called "Lessor") and **OCEAN RACE CHESAPEAKE INC.**, a Maryland non-profit corporation (hereinafter called "Lessee").

WHEREAS, the Volvo Ocean Race Around the World 2005-2006 is an internationally recognized yachting event which showcases the competitive spirit of men and women in a demanding race around the world; and

WHEREAS, Lessee was formed for the purpose of promoting and hosting the Volvo Ocean Race Around the World in the Chesapeake Bay area; and

WHEREAS, the Volvo Ocean Race Around the World desires to make Annapolis part of its Chesapeake Bay stopover in 2006; and

WHEREAS, Annapolis welcomes the opportunity to host the Volvo Ocean Race Around the World in 2006 to promote Annapolis' maritime heritage and its maritime industry; and

WHEREAS, Lessee desires to lease certain municipal property from the City for the 2006 Annapolis stopover and the City desires to lease certain municipal property to the Lessee for this purpose under the terms and conditions set forth herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing premises and the mutual terms and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I

Section 1.1. Premises and Term and Hours of Operation: Subject to the provisions and terms of this Lease Agreement (hereinafter, "Lease"), Lessor hereby leases to Lessee, for the purposes and uses described herein, the properties referenced in this Section as delineated on Exhibit A attached hereto (hereinafter cumulatively, the "Premises"), from Monday, May 1, 2006 (hereinafter, "Commencement Date") through Monday, May 8, 2006 (hereinafter, "Termination Date"). Hereinafter, the Commencement Date through the Termination Date is referred to as the "Term." Lessee's hours of operation on the Premises, to be fixed by the City's Point of Contact not later than thirty (30) days before the Commencement Date and set forth in this Article below, shall be as follows:

A. The area of the City Dock, including riparian area to the east of Susan B. Campbell Park for the purpose of accommodating race vessels, and Susan B. Campbell Park delineated on Exhibit A hereto ("Volvo Ocean Race Village"):

1	Dates/Hours	Setup/Takedown	Exhibit Hours	Entertainment
2 3	Monday, May 1, 2006	Access limited to riparian area east of Susan B. Campbell Park		
4 5	Tuesday, May 2, 2006	6pm to midnight		
6 7	Wednesday, May 3, 2006	24 hours		
8 9	Thursday, May 4, 2006	24 hours	10 a.m. - 10 p.m.	4 p.m. - 9 p.m.
10 11	Friday, May 5, 2006	24 hours	10 a.m. - 10 p.m.	4 p.m. - 9 p.m.
12 13	Saturday, May 6, 2006	24 hours	10 a.m. - 10 p.m.	4 p.m. - 9 p.m.
14 15 16	Fireworks - Saturday, May 6, 2006	24 hours		8 p.m. - 9 p.m.
17 18	Sunday, May 7, 2006	24 hours	10 a.m. - 10 p.m.	4 p.m. - 7 p.m.
19 20 21	Monday, May 8, 2006	24 hours		
22 23	B. The area of Prince George Street below Craig Street, including Prince George Street street-end-park delineated on Exhibit A hereto ("Staging Area"):			
24	Dates/Hours	Setup/Takedown	Exhibit Hours	Entertainment
25 26	Tuesday, May 2, 2006	6pm to midnight		
27 28	Wednesday, May 3, 2006	24 hours		
29 30	Thursday, May 4, 2006	24 hours		

1 Friday, May 5, 24 hours
2 2006

3 Saturday, May 6, 24 hours
4 2006

5 Sunday, May 7, 24 hours
6 2006

7 Monday, May 8, 24 hours
8 2006

9
10 C. The area of Donner and Fawcett property parking lots ("Parking Lots")
11 delineated on Exhibit A hereto ("Parking Facilities"):
12

Dates/Hours	Setup/Takedown	Exhibit Hours	Entertainment
-------------	----------------	---------------	---------------

Tuesday, May 2, 2006	6pm to midnight		
-------------------------	-----------------	--	--

Wednesday, May 3, 2006	24 hours		
---------------------------	----------	--	--

Thursday, May 4, 2006	24 hours		
--------------------------	----------	--	--

Friday, May 5, 2006	24 hours		
------------------------	----------	--	--

Saturday, May 6, 2006	24 hours		
--------------------------	----------	--	--

Sunday, May 7, 2006	24 hours		
------------------------	----------	--	--

Monday, May 8, 2006	24 hours		
------------------------	----------	--	--

28
29 D. The second floor of the City's recreational facilities at 9 St. Mary's
30 Street ("Media Center") from Commencement Date through Termination Date, twenty-
31 four (24) hours per day.

32 E. In addition to the foregoing Premises, Lessor hereby grants to
33 Lessee an easement over and across "Ego Alley" for the purpose of constructing a
34 temporary walkway at a location to be approved by the Harbormaster. The temporary

1 walkway shall be constructed no later than 48 hours prior to the Commencement Date
2 and shall be taken down, disassembled and removed by lessee not later than 24 hours
3 after the Termination Date. Lessee assumes all responsibility for the construction,
4 maintenance, use of the walkway and for any injury to any person or property in the
5 construction, maintenance, use or disassembling of the walkway.
6

7 **Section 1.2. Approval of Dates and Hours:** As witnessed by the following
8 initials, the hours of operation set forth in Section 1.1 above are hereby approved by the
9 City Point of Contact and agreed to by the parties:

10 City Point of Contact: Frank Biba or designee _____ (date) _____;
11 Lessee: Ocean Race Chesapeake: Lee Tawney or designee _____ (date) _____.
12
13

14 **Section 1.3. Rent:** The rent shall be one dollar hereinafter referred to as
15 "Base Rent." Any other fee charged under this Lease, however designated, shall
16 constitute and be referred to as "Additional Rent".
17

18 **Section 1.4. Use of Premises:** The Premises may be used by Lessee for
19 Volvo Ocean Race Around the World 2005-2006 festivities and race support purposes.
20 Prince George Street shall be used for a staging area only, all on a non-exclusive basis,
21 without interference with through access by abutting government offices, businesses,
22 residences and dinghy tie-up. Recreation Center 2nd Floor shall be used for media
23 communications purposes only. Lessor's agreement to lease the Premises to Lessee in
24 no way creates an obligation for Lessor to furnish any services, labor, materials or
25 equipment (including but not limited to docks) to Lessee or any third party. Lessor shall
26 have access to the Premises during the Term of this Lease.
27

28 **Section 1.5. City Fees Waived.** In accordance with Section
29 6.04.210.D.3 of the City Code, all fees for City facilities and services are waived for the
30 Leasee.

31 **Section 1.6. Admissions and Vendor Fees:** Lessee shall not charge or
32 collect an admission fee of any kind. No person or entity on the Premises pursuant to
33 this Lease shall charge or collect an admission fee of any kind from the public. The
34 Leasee may charge vendors for space used for displays and sales of merchandise.
35

36 **ARTICLE II**

37 **Section 2.1 Food and Alcoholic Beverage Sales:** ~~Non-food and non-~~
38 ~~alcoholic beverage items may be sold on the Premises. Only non-food items that are~~
39 ~~maritime-related and non-alcoholic beverage items may be sold on the Premises.~~ Food
40 and alcoholic beverage sales shall be prohibited on the Premises during the Term of the
41 lease.
42

1 **Section 2.2 Music:** Lessee may have live music on the Premises as
2 provided in this Section. In addition to such other requirements that may be imposed by
3 the Annapolis Police Department (hereinafter, "APD") during or immediately before any
4 performance, the music shall meet the following requirements:

5 A. All live music shall be performed from a stage located in the parking
6 lot behind the Harbormaster's building and shall be directed toward Spa Creek, with
7 sound barriers in back, where designated "Stage" on Exhibit A hereto.

8 B. Lessee shall take all reasonable measures to preclude the music
9 from being audible beyond the Spa Creek end of Susan B. Campbell Park. Lessee
10 shall comply with City of Annapolis noise ordinance (City Code, Section 11.12.020).
11

12 **Section 2.3. Conduct on Premises:** Lessee shall conduct its operations
13 on the Premises in an orderly and commercially reasonable manner, considering the
14 nature of such operations, so as not to unreasonably annoy, disturb, endanger or offend
15 others (whether via noise or otherwise). Lessee shall use and maintain the Premises in
16 such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke,
17 noxious gases, vapors, dust, noise or otherwise. Lessee shall not bring to, keep on,
18 store at or use on the Premises any explosives of any kind (including but not limited to
19 entertainment related pyrotechnics). Lessee shall maintain the Premises in a safe
20 condition so as to avoid injury to persons and property. If Lessee fails to comply with
21 the terms of this Section, Lessor shall have the authority, but not the obligation, to
22 require Lessee to immediately cease and desist all activities located on the Premises or
23 any part thereof.
24

25 **Section 2.4 Vendors List:** Lessee shall provide to Lessor not later than
26 thirty (30) days before the Commencement Date a complete list of all exhibitors,
27 vendors, displays, activities, festivities, music, entertainment and operations to take
28 place on the Premises during the term hereof. The list shall not be amended, except for
29 deletions thereto, without the expressed written consent of the City's Point of Contact.
30

31 **Section 2.5 Media Center Equipment:** Lessee may, at its sole expense,
32 or the expense of any third party, equip and use the Rec Center 2nd Floor for media
33 communications purposes. Lessee shall be solely responsible for the security as well
34 as the safe and proper construction, placement, maintenance and use of all such
35 equipment and shall indemnify and defend Lessor against any and all claims related
36 thereto pursuant to Section 5.1 of this Lease.
37

38 **Section 2.6. Docking Structures:** Lessee may, at its sole expense or the
39 expense of any third party, equip and use and allow third parties to equip and use
40 portions of the Volvo Ocean Race Village delineated on Exhibit A hereto for the
41 construction, placement, maintenance and use of temporary docking structures to be
42 used by Volvo Ocean Race competition boats, support vessels, historic boats and party

boats. Lessee shall be solely responsible for the security as well as the safe and proper construction, placement, maintenance and use of all such structures and shall indemnify and defend Lessor against any and all claims related thereto pursuant to Section 5.1 of this Lease. Not later than 30 days before the Commencement Date, Lessor will take all reasonable actions necessary to provide sufficient water depth to accommodate Volvo Ocean Race vessels at the docking structures indicated on Exhibit A.

Section 2.7. Information Office: Lessee may, at its sole expense or the expense of any third party, equip and use and allow third parties to equip and use portions of Prince George Street (Exhibit A) for the construction, placement, maintenance and use of a temporary information office provided, however, that during the Pre-festivities Inspection (Section 3.6 below) the City may specify the location, type and dimensions of any such structure.

Section 2.8. Additional Structures: Lessee may, at its sole expense, construct, place, maintain and use on the Premises such seats, platforms, booths, tanks, scaffolding, rigging, catwalks, tents, exhibits, fences and other apparatus or structures which Lessee may deem necessary or desirable for its purposes. Lessee shall be solely responsible for the security as well as the safe and proper construction, placement, maintenance and use of all such structures and shall indemnify and defend Lessor against any and all claims related thereto pursuant to Section 5.1 of this Lease.

Section 2.9. Removal of Structures: Not later than midnight, 12:00 a.m. of the Termination Date, Lessee shall remove any and all structures constructed or placed by it or by any third party at Lessee's request on the Premises and repair all alterations and damage to the Premises resulting from the construction, maintenance, use or presence of those structures on the Premises.

Section 2.10. Public Access: Lessee shall not have the right to enclose the Premises in such a manner as to limit entry onto the Premises, except as necessary to secure the Race Dock, the Rec Center 2nd Floor and the Staging Area. During the Term of this Lease, Lessee shall assume responsibility to assure that all Festivities on the Premises comply with the American's with Disabilities Act (ADA).

ARTICLE III

Section 3.1. Facilities and Services: Lessee shall have the use of the facilities and services set forth in this Article under the terms and conditions provided herein.

Section 3.2. Security Services: Lessee shall be responsible for security at all points of entry, if any, to the Premises as well as throughout and within each such property (hereinafter, "Security Areas") during the term hereof. Lessee shall establish a security liaison with APD and coordinate all security within the Security Areas with APD

1 according to APD's requirements. Lessee's responsibility under this Section shall
2 extend to and include the control and conduct of individuals while entering the Premises
3 whether or not such individuals are located inside the Premises.
4

5 **Section 3.3. Fire Services:** Following the erection of all booths and other
6 structures on the Premises, but before the festivities open, the parties shall meet at the
7 Premises to determine compliance with Annapolis Fire Department regulations and
8 accessibility of fire lanes and turning radius. Lessee shall comply with all such
9 regulations including accessibility of fire lanes and turning-radius requirements. In
10 addition to all other safety restrictions provided in this Lease, no explosives, welding,
11 open flame devices or running of water craft propulsion engines shall be permitted on
12 the Premises.
13

14 **Section 3.4. Utilities:** Lessee shall have use of existing water and
15 electricity facilities on the Premises during the Term of this Lease. Lessee at its own
16 expense shall install any temporary electrical equipment, lines and devices required to
17 provide power to the Premises, in compliance with the applicable National Electric
18 Code. Lessee shall not operate any such equipment, lines or devices until inspected
19 and approved by the City Department of Neighborhood and Environmental Programs.
20 Lessee shall not begin any work described in this Section until the work has been
21 inspected by BGE's Miss Utility program (1-800-257-7777). Lessee shall be solely
22 responsible for the security as well as the safe and proper construction, placement,
23 maintenance and use of all such equipment, lines and devices and shall indemnify and
24 defend Lessor against any and all claims related thereto pursuant to Section 5.1 of this
25 Lease.
26

27 **Section 3.5. Other Services:** The parties shall coordinate other services in
28 advance of the term of this Lease.
29

30 **Section 3.6. Pre-Festivities Inspection:** Prior to the opening of the
31 festivities, Lessee's representative shall meet with representatives of the Annapolis
32 Police Department, Annapolis Fire Department, Annapolis Department of Recreation
33 and Parks, Annapolis Harbormaster's Office, Annapolis Central Services, Annapolis
34 Department of Neighborhood and Environmental Programs and Annapolis Department
35 of Public Works and inspect the Premises and nearby areas to determine compliance
36 with City requirements. Written approvals by representatives of the above referenced
37 departments and offices are required before Lessee may open the festivities. Lessor
38 shall not refuse permission to open the festivities or any part of the festivities under this
39 paragraph unless to protect the public health, safety or welfare. The parties shall make
40 every effort to limit that part of the festivities not opened pursuant to this Section and to
41 allow Lessee to open the closed portion of the festivities as soon as the public health,
42 safety and welfare allow to Lessor's satisfaction.

Section 3.7. Inspection Fee: Lessee shall not be required to pay Lessor for the cost of inspections required pursuant to this Lease.

Section 3.8. Harbormaster Authority: Throughout the Term of this Lease, the Annapolis Harbormaster shall retain all authority to issue orders affecting vessels located within the Premises as set forth City Code, Section 15.04.030.

ARTICLE IV

Section 4.1. Insurance: Lessee shall, at its own expense, obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and property damage; and Five Million Dollars (\$5,000,000.00) umbrella policy; which shall be effective during the entire period of time during which the Lessee shall use or occupy the Premises, or any part thereof.

Such insurance policy shall specifically name the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as additionally insured, and insure against any and all loss, costs, damages, and expenses suffered by any person, or to any property, including property owned by Lessor, due to or alleged to be due to: (1) an act, omission or the negligence of Lessee, its officers, agents, employees or contractors; or (2) to the use of the Premises, or any part thereof by Lessee, its officers, agents, employees or contractors; or (3) the location, design, construction, maintenance or design of temporary structures referenced in Article II hereof.

The insurer or insurers of the policy or policies referred to in the preceding paragraph shall be: authorized to write the required insurance; approved by the Insurance Commissioner of the State of Maryland; and subject to the reasonable approval of the City Attorney of Annapolis. The form and substance of the policy or policies of insurance shall also be subject to reasonable approval by the City Attorney of Annapolis, and shall be submitted to the City Attorney for such approval not later than April 1, 2006. Said policy or policies of insurance shall be filed by Lessee with the City Attorney of Annapolis not less than ten (10) days prior to Lessee's occupancy of the Premises.

The Certificate for each such insurance policy shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, whether at the request of Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Attorney of Annapolis and that such notice shall be transmitted postage prepaid, with return receipt requested.

ARTICLE V

Section 5.1. Indemnity: Lessee agrees that it shall forever indemnify, defend and hold harmless the Lessor, its officers, agents, and employees, from and

1 against any and all claims, suits, actions, judgments, and liability for loss, injury,
2 damages and/or expenses suffered or alleged to have been suffered by any person
3 (including but not limited to Lessor, its officers, agents or employees) or to any property
4 (including but not limited to any property owned by Lessor, its officers, agents or
5 employees) to or alleged to be caused by: (1) an act, omission or the negligence of
6 Lessee, its officers, agents, employees or contractors; or (2) the use of the Premises, or
7 any part thereof, by Lessee, its officers, agents, employees or contractors; or (3) the
8 location, design, construction, maintenance, use or equipping of any structure placed on
9 the Premises or any part thereof pursuant to this Lease. Lessee agrees to reimburse
10 the party to be indemnified or held harmless within thirty (30) calendar days after written
11 demand for such indemnification or other reimbursement, and failing such
12 indemnification or reimbursement Lessee shall pay such party interest on the amount
13 demanded at the rate six percent (6%) per annum calculated from the date of such
14 demand plus reasonable attorneys fees.

15 16 **ARTICLE VI**

17 **Section 6.1. Security:** Lessee shall contract with and pay, as independent
18 contractors, bonded and insured security guards from an agency duly licensed by the
19 State of Maryland, in numbers sufficient to maintain security and order as required by
20 Article III hereof. Lessee shall provide to the Annapolis Police Department not later than
21 ninety (90) days prior to Commencement Date, a security plan for the festivities in a
22 form and with such details and revisions thereto as the APD in its discretion may
23 require. Lessee shall consult with the Annapolis Police Department in the development
24 of Lessee's security plan.

25 26 **ARTICLE VII**

27
28 **Section 7.1. Lessee's Permits:** Subject to the inspection provisions of this
29 Lease and to standard public health, safety and welfare approvals, any and all zoning
30 permits, licenses or authorizations required to be obtained from the City of Annapolis or
31 any agency thereof by the Lessee for the purpose of constructing or erecting the
32 temporary structures and equipment described in this Lease or for operating the
33 Festivities shall be deemed granted and issued upon the execution of this Lease by the
34 Lessor and Lessee. All Federal, State and County permits, licenses and authorizations
35 which may be required shall be the responsibility to of the Lessee.

36
37 **Section 7.2. Vendors' Permits/Taxes:** Vendors who sell merchandise on the
38 Premises shall obtain all required non-City licenses and permits and shall pay all
39 required Federal, State and County taxes and fees. Lessee represents that all such
40 vendors shall comply with all licensing requirements of the Annapolis City Code in the
41 operation of the vendors' businesses on the Premises during the Term of this Lease. In
42 consideration of that representation by Lessee, this Lease shall satisfy any City

1 licensing requirements for such vendors provided, however, that Lessor reserves the
2 right to charge and collect from all such vendors any and all taxes and fees applicable
3 to the vendor's business.

4 **ARTICLE VIII**

5 **Section 8.1. Trash:** Lessor shall park a Department of Public Works refuse
6 truck or other receptacle at lower Prince George's Street or at any other location on the
7 Premises selected by Lessor. The truck shall be available to Lessee for refuse
8 disposal. No oil, petroleum products or other hazardous or medical waste shall be
9 deposited in the refuse truck or other receptacle. Lessee shall collect trash on the
10 Premises during the Term of this Lease.

11
12 **Section 8.2. Cleanliness:** Within the Premises, the Lessee shall be
13 responsible for providing trash and refuse containers, collecting the trash and refuse
14 and for depositing trash and refuse in the refuse truck provided by the City. Lessee
15 shall at all times during the occupancy of the Premises police same for trash and refuse
16 removal. The Department of Public Works will provide trash bags and boxes for use by
17 the Lessee.

18
19 **Section 8.3. Sanitation and Toilets:** Lessee, at its own expense, shall
20 provide adequate and sanitary toilet facilities distributed throughout the Premises for
21 use by the general public and others attending or participating in the festivities as
22 required by the Director of Public Works in his/her sole discretion.

23 **ARTICLE IX**

24 **Section 9.1. Quiet Enjoyment:** Subject to Section 2.10 hereof, Lessor
25 covenants with Lessee that at all times during the term of this Lease Agreement,
26 Lessee shall peacefully hold and quietly enjoy the Premises without any disturbance or
27 hindrance from Lessor or from any other person claiming through Lessor, except that
28 the Lessor, or others claiming through the Lessor, may enter onto the Premises to
29 conduct municipal business, to effect necessary repairs to their own facilities as
30 reasonably contemplated by the terms of this Lease, to assure compliance with the
31 terms of this Lease and to take public safety related actions. Lessee shall cooperate
32 with the Lessor to effect this access to the Premises.

33 **ARTICLE X**

34 **Section 10.1. Condition of Premises After Festivities:** Following its
35 occupancy of the Premises, Lessee, at Lessee's sole expense, shall return the
36 Premises in the same or superior condition than received.

37
38 **Section 10.2. Lessee's Equipment After Festivities:** Prior to midnight
39 12:00 a.m. of the Termination Date, Lessee shall remove all property, fixtures and
40 chattels from the Premises placed thereon in conjunction with the festivities. In the
41
42

1 event that Lessee, its officers, agents, employees or contractors fail to remove any such
2 item of property, Lessor reserves the right to, and shall not be obligated to, remove and
3 store any such item of property after the Termination Date at Lessee's expense. As an
4 alternative, Lessor may dispose of the property or leave the property at the Premises.
5 In any case, Lessor shall charge Lessee a per diem rental for storage of such property.
6 Lessor shall bear no responsibility or liability for damage to or expense incurred as a
7 result of property left, removed or stored under the provisions of this Section. Lessee
8 shall pay to Lessor any expenses or charges under this Section within thirty (30) days
9 after delivery of any bill by Lessor to Lessee. If any property is not claimed by Lessee
10 within thirty (30) days of the Termination Date, Lessor may sell same at private or public
11 sale under such terms as Lessor may deem appropriate in its sole discretion and apply
12 such proceeds as it may deem appropriate in its sole discretion or otherwise dispose of.
13

14 **Section 10.3. Post-Festivities Inspection/Repairs:** Within two (2) days
15 following the Termination Date, Lessee shall accompany Lessor's representatives
16 (including Department of Central Services, Department of Public Works and
17 Department of Recreation and Parks personnel) during a tour of the Premises to
18 determine the condition thereof. Within seven (7) days following such inspection,
19 Lessor shall deliver to Lessee a list of corrective and repair measures to be taken by
20 Lessee including the time by which such measures are to be taken. Items on the list not
21 corrected or repaired by Lessee within the stated time shall be billed by Lessor to
22 Lessee and shall be paid by the Lessee within thirty (30) days after the date of such bill.
23

24 **ARTICLE XI**

25 **Section 11.1. Remedies:** It is understood and agreed that any and all
26 duties, liabilities and/or obligations imposed upon or assumed by the Lessee and Lessor
27 by or under this lease shall be taken or construed as cumulative and that the mention of
28 any specified duty, liability or obligation imposed upon or assumed by Lessee or Lessor
29 under this Lease, shall not be taken or construed as a limitation or restriction upon any
30 or all of the other duties, liabilities, or obligations imposed upon or assumed by the
31 Lessee under this lease and that all remedies provided herein shall be construed to be
32 cumulative and in addition to any other remedies provided herein, or any remedies
33 provided in law or equity which the Lessor or Lessee would have in any case. It is
34 understood and agreed that either party shall have the right to seek and obtain in any
35 court of competent jurisdiction an injunction without the necessity of posting a bond to
36 restrain a violation by the other party of any covenant or covenants contained in this
37 Lease, anything to the contrary notwithstanding. In no case shall a waiver by either
38 party of the right to seek relief under this provision constitute a waiver of any other or
39 further violation. The remedies provided hereunder shall not be deemed exclusive of
40 other remedies not specified.
41

Section 11.2. Authority to Lease: In the event that it is ever determined by a court of competent jurisdiction that Lessor lacks the authority to lease any portion or all of the property herein intended to be leased, Lessor shall not be liable for any losses or damages sustained by Lessee.

Section 11.3. Immunities: Notwithstanding any provision in this Lease, implicitly or explicitly to the contrary, Lessor reserves any and all immunities (whether in contract, in tort or otherwise), partial or total, statutory or common law, in any proceeding related to this Lease, to the Festivities referred to herein, to the operations of any vendor on the Premises or to the condition. or to the condition or use of the Premises (or any part thereof) during the Term of this Lease. Such reservation of rights shall extend to any claim made by or through Lessee, by any third party, or by any governmental entity or agency.

ARTICLE XII

Section 12.1. Impossibility of Performance: If, for any reason, an unforeseen event not the act of Lessor occurs, including but not limited to flood, winds, severe weather, fire, casualty, act of God, labor strike or other unforeseen occurrence which renders impossible the fulfillment of any rental period of this lease, Lessee shall have no right to nor claim for damages against Lessor, or the reduction of any financial obligation to Lessor.

ARTICLE XIII

Section 13.1. Payment Terms: Within thirty (30) days following the delivery of Lessor's statement of charges, Lessee shall make all payments due under this agreement by check, payable to the City of Annapolis. In addition to all other amounts due hereunder, Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment required hereunder that is more than sixty (60) days past due, until paid.

ARTICLE XIV

Section 14.1. Time is of the Essence: Time is of the essence in the performance of this Lease, and the times herein granted shall not be extended for any reason, except as provided herein, for the occupancy or use of the Premises. The foregoing notwithstanding, the installation or removal of equipment, materials or displays therefrom may be extended for a reasonable time by written permission from the City point of contact.

ARTICLE XV

Section 15.1. Assignment: Lessee shall not assign or transfer this Lease, in whole or in part, or any of its rights hereunder, without the prior written consent of the Lessor, which consent may be withheld in Lessor's sole discretion..

ARTICLE XVI

Section 16.1. Non-Agent: Lessee herein is an independent contracting party and not the agent or employee of the Lessor. Under no circumstances shall this lease be considered a contract of partnership or joint venture.

ARTICLE XVII

Section 17.1. Liens: Lessee hereby consents to and Lessor shall have a lien upon all goods, personal property and fixtures of Lessee located upon the leased Premises for any and all unpaid charges which arise under this Lease. Lessee hereby consents to and Lessor shall have the power to impound and retain the possession of such goods, personal property and fixtures until all such charges and late fees due under this Lease have been paid, in full, to the satisfaction of Lessor. In the event such charges remain unpaid thirty (30) days after the termination of the rental period, Lessor shall have the power to sell such property at public auction, and apply the receipts from such auction to all such unpaid charges.

ARTICLE XVIII

Section 18.1. Compliance with All Laws: Lessee agrees to comply with all laws, ordinances, and statutes applicable to the leased Premises, or any part thereof, and the use thereof, and to pay all taxes or charges imposed by law in connection with Lessee's use and occupancy of the Premises.

ARTICLE XIX

Section 19.1. Contact Persons: For purposes of coordinating inspections and other matters set forth under this Lease the parties designate the following contact persons:

- A. Lessor: Primary Point of Contact: Frank Biba
160 Duke of Gloucester Street
Annapolis, MD 21401
Daytime Phone No. 410-263-7946
or
Secondary Point of Contact: Karen Engelke
160 Duke of Gloucester Street
Annapolis, MD 21401
Daytime Phone No. 410-263-7940
- B. Lessee: Lee Tawney, Ocean Race Chesapeake, Inc.
World Trade Center
Baltimore, Maryland 21202

ARTICLE XX

Section 20.1. Local Vendors: Lessee shall use its best efforts to contract with Annapolis vendors in all matters related to the festivities.

ARTICLE XXI

Section 21.1 General Powers: Nothing herein shall be construed to preclude the City from exercising its general public safety powers or any other power, on or off the Premises, as it deems appropriate to protect the public safety, interest and welfare.

ARTICLE XXII

Section 22.1 Authority: This Lease Agreement is authorized by Ordinance O-39-04.

IN WITNESS WHEREOF, the parties hereto, by and through this duly authorized agents, have caused this Lease to be executed this ____ day of _____, 2005.

ATTEST:

CITY OF ANNAPOLIS

Deborah Heinbuch, MMC
City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

OCEAN RACE CHESAPEAKE, INC.

WITNESS

BY: _____
_____, PRESIDENT
Address: _____
Phone: _____

Approved as to form and legal sufficiency

Shaém C. Spencer, City Attorney

Date

Exhibit A

